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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 419.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

vs.

MARY M. HUTCHINGS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR RESPONDENT.

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OPINIONS BELOW.

The opinion of the Board of Tax Appeals (R. 8-12) is reported at 40 B. T. A. 27. The opinion of the Circuit Court of Appeals for the Fifth Circuit (R. 21) is reported at 111 Fed. (2d) 229.

STATEMENT OF THE CASE.

The case arises on a writ of certiorari issued, upon application of Petitioner, to review the judgment of the Circuit Court of Appeals for the Fifth Circuit.

On December 30, 1935, pursuant to a written agreement, Respondent transferred real and personal property to trustees to hold in trust for the use and benefit of her seven children who were to share equally in all distributions and payments of either principal or income. (R. 9.)

Respondent, in filing her gift tax return, claimed an exclusion of $5000 for each of her seven children under the provisions of Sec. 504(b) of the Revenue Act of 1932. (R. 3.) Petitioner's position is that Respondent is entitled to only one $5000 exemption instead of the seven claimed. The Circuit Court of Appeals for the Fifth Circuit following a line, unbroken at the time, of decisions of other Courts held for Respondent. To review the correctness of that decision, writ of certiorari has been granted in this case upon Petitioner's application.

QUESTION INVOLVED.

Whether the transfer of property to trustees in trust for the use and benefit of seven living, individual beneficiaries constitutes, for the purpose of determining the number of exclusions properly allowable under Section 504b of the Gift Tax Act of 1932, seven gifts to the beneficiaries or one gift to the trust as an entity.

STATUTE INVOLVED.

Revenue Act of 1932, c. 209, 47 Stat. 169:

Sec. 501. IMPOSITION OF TAX.

(a) For the calendar year 1932 and each calendar year thereafter a tax, computed as provided in section 502, shall be imposed upon the transfer during such calendar year by any individual, resident or non-resident, of property by gift.

(b) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but, in the case of a non-resident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States. The tax shall not apply to a transfer made on or before the date of the enactment of this Act.

(U. S. C., Title 26, Sec. 550.)

Sec. 504, NET GIFTS.

(a) **General Definition.**—The term "net gifts" means the total amount of gifts made during the calendar year, less the deductions provided in section 505.

(b) **Gifts Less Than $5,000.**—In the case of gifts (other than of future interests in property) made to any person by the donor during the calendar year, the first $5,000 of such gifts to such person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year.

(U. S. C., Title 26, Sec. 553.)

Sec. 1111. DEFINITIONS.

(a) When used in this Act—

(1) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(U. S. C., Title 26, Sec. 1696.)

SUMMARY OF THE ARGUMENT.

POINT I.

Each beneficiary named in the trust and not the trust is a "person" within the meaning of Sec. 504(b) of the Revenue Act of 1932.

POINT II.

The tax is levied upon transfers of property by gift. The gifts were made to the beneficiaries and not to the trust.

POINT III.

The tax in question is imposed upon the transfer of property by gift. Sec. 504(b) of the Revenue Act of 1932 provides in the case of gifts made to any person by the donor, the first $5000 of such gifts to such person shall not be included. The transfer of property by Respondent in trust for the use and benefit of her seven children constituted seven gifts by her as donor, one to each child. The first $5000 of each of such gifts is properly excluded in determining the total amount of gifts subject to the tax under Sec. 504(b) of the Revenue Act of 1932.

POINT IV.

The decisions of the Court below, of five other Circuit Courts, of the Court of Claims, and the present position of the Board of Tax Appeals are correct interpretations of the law. The single Circuit Court decision to the contrary does not correctly construe the statute.

ARGUMENT.

POINT I.

Each beneficiary named in the trust and not the trust is a "person" within the meaning of Sec. 504(b) of the Revenue Act of 1932.

Sec. 504(b) of the Revenue Act of 1932 in part provides:

> "In the case of gifts . . . made to any person by the donor . . . the first $5000 of such gifts to such person shall not . . . be included in the total amount of gifts . . . ."

The word "person" used therein certainly includes the seven living individuals named as beneficiaries of the trust. The gifts were made to the donor's seven children and they were the "persons" within the meaning of Sec. 504(b) properly construed rather than the trust. **Welch vs. Davidson,** 102 Fed. (2) 100. Under the logical and proper interpretation of Sec. 504(b) Respondent made a gift to each of her seven children rather than one gift to the trust.

POINT II.

The tax is levied upon transfers of property by gift. The gifts were made to the beneficiaries and not to the trust.

POINT III.

The tax in question is imposed upon the transfer of property by gift. Sec. 504(b) of the Revenue Act of 1932 provides in the case of gifts made to any person by the

donor, the first $5000 of such gifts to such person shall not be included. The transfer of property by Respondent in trust for the use and benefit of her seven children constituted seven gifts by her as donor, one to each child. The first $5000 of each of such gifts is properly excluded in determining the total amount of gifts subject to the tax under Sec. 504(b) of the Revenue Act of 1932.

Petitioner contends that as Sec. 1111 of the Act defines the term "person" when used in the Act to mean "an individual, a trust or estate, a partnership, or a corporation," the trust was the "person" under Sec. 504(b). But this definition is broad enough to include both the individuals and the trust. The real question is whether Respondent's seven children named in the trust indenture as beneficiaries are the "persons" to whom the gifts were made, as held by the Court below, or whether, as petitioner contends, the gifts were made to the trust.

The Act was aimed at gifts. **Welch vs. Davidson,** 102 Fed. (2) 100. And the gifts were not to the trust or trustees but to the children named as beneficiaries. **Rheinstrom vs. Comm'r,** 105 Fed. (2) 642. The trustees held the legal title only and received no economic benefits without consideration. They certainly were not the object of the donor's bounty or donative intent. The beneficiaries, and not the trust, were entitled to all of the income and corpus of the trust, except the expenses and fees of administration. The donor's intention was to make a gift to each of her seven children and the trust was the means selected to accomplish her purpose. She neither gave the trust anything nor had the intent to do so. As a matter of substance, rather than form, the gifts were not to the trust but to the beneficiaries. **Hutchings vs. Comm'r.**

111 Fed. (2) 229; **Welch vs. Davidson**, 102 Fed. (2) 100; **Rheinstrom vs. Comm'r.**, 105 Fed. (2) 642; **Robertson vs. Nee**, 105 Fed. (2) 651; **McBrier vs. Comm'r.**, 108 Fed. (2) 967.

POINT IV.

The decisions of the Court below, of five other Circuit Courts, of the Court of Claims, and the present position of the Board of Tax Appeals are correct interpretations of the law. The single Circuit Court decision to the contrary does not correctly construe the statute.

The District Courts, the Court of Claims, the Circuit Courts of Appeals, with one exception, and the Board of Tax Appeals, have held under similar facts that the gifts are to the beneficiaries and not to the trusts and that an exclusion of $5000 is proper for each beneficiary. **Early vs. Reid**, 112 Fed. (2) 718 (C.C.A. 4th); **Pelzer vs. U. S.**, 31 Fed. Supp. 770 (Ct. Cls.); **Welch vs. Davidson**, 102 Fed. (2) 100 (C.C.A. 1st); **Rheinstrom vs. Comm'r.**, 105 Fed. (2) 642 (C.C.A. 8th); **Robertson vs. Nee**, 105 Fed. (2) 651 (C.C.A. 8th); **McBrier vs. Comm'r**, 108 Fed. (2) 967 (C.C.A. 3rd). The opinion in **U. S. vs. Ryerson**, 114 Fed. (2) 150 (C.C.A. 7th) does not mention or discuss the cases to the contrary and writ of certiorari has been granted in that case.

CONCLUSION.

Under a proper interpretation of Section 504b, Respondent made gifts to each of her seven children rather than one gift to the trust. Substance rather than form should control. The judgment of the Court below is correct and should be affirmed.

Respectfully submitted,

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December 28, 1940.

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